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# *The* **NORTH CAROLINA REGISTER**

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**Volume 2 • Issue 3 • Pages 170-198**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
*Publication Deadlines and Schedules*  
*(April 1987 - March 1988)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****	*****
04 15 87	03 26 87	04 02 87	05 15 87	06 14 87	09 01 87
05 15 87	04 27 87	05 04 87	06 14 87	07 14 87	10 01 87
06 15 87	05 26 87	06 02 87	07 15 87	08 14 87	11 01 87
07 15 87	06 25 87	07 02 87	08 14 87	09 13 87	12 01 87
08 14 87	07 27 87	08 03 87	09 13 87	10 13 87	01 01 88
09 15 87	08 26 87	09 02 87	10 15 87	11 14 87	02 01 88
10 15 87	09 25 87	10 02 87	11 14 87	12 14 87	03 01 88
11 16 87	10 27 87	11 03 87	12 16 87	01 15 88	04 01 88
12 15 87	11 23 87	12 02 87	01 14 88	02 13 88	05 01 88
01 15 88	12 28 87	01 04 88	02 14 88	03 15 88	06 01 88
02 15 88	01 26 88	02 02 88	03 16 88	04 15 88	07 01 88
03 15 88	02 24 88	03 02 88	04 14 88	05 14 88	08 01 88

\* The "Earliest Effective Date" is computed assuming that the agency files the rules with The Administrative Rules Review Commission the same calendar month as adoption by the agency and ARRC approves the rules at the next calendar month meeting.

## CORRECTION

**CORRECTION TO NOTICE AS PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 2, ISSUE 2, ON PAGES 158-159. THE NOTICE SHOULD READ:**

*Notice is hereby given in accordance with G.S. 150B-12 that the Secretary of the Department of Human Resources intends to amend regulation cited as 10 NCAC 35E .0315.*

*The proposed effective date of this action is October 1, 1987.*

*The public hearing will be conducted at 10:00 a.m. on June 15, 1987 at 4th Floor Conference Room, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC.*

*Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Victoria Voight, Office of Legislative and Legal Affairs, 325 N. Salisbury Street, Raleigh, NC 919-733-6920.*

## EXECUTIVE ORDERS

### EXECUTIVE ORDER NUMBER 47

#### AMENDMENT TO EXECUTIVE ORDER NUMBER 27

#### "NORTH CAROLINA FUND FOR CHILDREN AND FAMILIES COMMISSION"

Under Executive Order 27 issued on September 8, 1986, the North Carolina Fund for Children and Families Commission, hereafter referred to as "The Commission," was established under the office of the Governor. It has been made to appear that for the efficient administration of this Commission it should be placed in the Department of Administration, under the Youth Advocacy and Involvement Office.

It has also been made to appear that in order to properly perform its duties, the Commission should be authorized to enter into an agreement with other entities to manage and invest and otherwise act as trustee for the North Carolina Fund for Children and Families, hereafter referred to as "The Fund."

Therefore, by authority vested in me as Governor, by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order 27 is hereby amended to read as follows:

#### Section 1. ESTABLISHMENT

The North Carolina Fund for Children and Families Commission is hereby established. The Commission shall administer the North Carolina Fund for Children and Families which shall provide resources for intervention and treatment for victimized children and their families. The Commission shall be composed of five (5) members who will be appointed by the Governor to serve two (2) year terms plus the the following three (3) cabinet officers or their designees who shall serve as ex-officio members: Secretaries of the Department of Administration, Department of Crime Control and Public Safety, and Department of Human Resources. The Governor shall also appoint a Chairman of the

Commission who, in the discretion of the Governor, may or may not be a member of the Commission.

#### Section 2. FUNCTIONS

(a) The Commission shall meet regularly at the call of the Chairman and may hold special meetings at any time at the call of the Chairman or Governor.

(b) The Commission shall have the following duties:

(1) Enter into an agreement with such persons, corporation or foundation, as the Commission in its discretion determines to be appropriate, to manage and invest monies contributed to the Fund. Such an agreement shall further provide that such persons, corporation or foundation shall:

(A) Act as Trustee for monies received by the North Carolina Fund for Children and Families.

(B) Receive on behalf of the Commission gifts, bequests, and devises for deposit and investment into the Fund.

(C) Oversee and manage the investment of monies in the Fund.

(D) Pay monies out of the Fund as directed by the Commission.

(2) Assess the critical needs of victimized children and their families.

(3) Receive gifts, bequests, and devises for deposit and investment into the fund.

(4) Solicit proposals for programs which will be aimed at meeting identified service needs.

(5) Establish criteria for awarding of grants which shall include and emphasize the public-private partnership concept.

(6) Fund programs that in the discretion of the Commission, effectively and efficiently treat and rehabilitate victimized children and their families.

(7) Present a report to the Governor at the end of each fiscal year.

(8) Make recommendations to

the Governor for statewide replication of effective and efficient programs.

- (c) If, after entering into the agreement described in subparagraph 1 of subsection (b) of this Section, the Commission determines it is necessary to qualify contributions to the Fund as charitable donations under the Federal Tax Laws and the corresponding sections of applicable State laws, the Commission is authorized to execute such additional documents as may be necessary to qualify contributions to the Fund as charitable donations under the tax laws of the United States and corresponding sections of applicable State law.

### Section 3. ADMINISTRATION

- (a) A staff consisting of a director and other support staff may be employed by the Department of Administration to carry-out the duties and responsibilities of the Commission.
- (b) Subject to the availability of funds, members of the Commission may be reimbursed for travel and subsistence expenses as authorized by G.S. 138-5. Funds for reimbursement as are available may be paid from the receipts of the fund or from the Department of Administration.
- (c) The administrative costs of the commission shall be provided for by the Department of Administration.
- (d) All funds administered by the Commission shall be subject to audit by the State Auditor.

### Section 4. IMPLEMENTATION AND DURATION

- (a) This order shall be effective immediately.
- (b) This commission shall dissolve at the pleasure of the Governor. In the event of dissolution, the assets remaining in the fund will be turned over to one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2)

of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, or to the Federal, State, or local government for exclusive public purposes.

Done in Raleigh, this the 28th day of April, 1987.

### EXECUTIVE ORDER NUMBER 48

### AMENDMENT TO EXECUTIVE ORDER NUMBER 43

### "NORTH CAROLINA EMERGENCY RESPONSE COMMISSION"

The North Carolina Emergency Response Commission was established by Executive Order Number 43 pursuant to the Emergency Planning Community Right-to-Know Act of 1986, enacted by the United States Congress.

It has been made to appear that the Secretary of the Department of Natural Resources and Community Development or his designee should be a member of this Commission.

Therefore, by the authority vested in me as Governor, by the Constitution and laws of North Carolina, IT IS ORDERED:

### Section 1. AMENDMENT

The following language that appears in Section 1 of Executive Order 43 describing the persons that are to compose the Commission is deleted:

"A representative of the Environmental Management Commission appointed by the Secretary of the Department of Natural Resources and Community Development." and at the same place in the Executive Order that such language is deleted, the following language is added:

"The Secretary of the Department of Natural Resources and Community Development or his designee."

### Section 2. CONTINUATION OF PREVIOUS EXECUTIVE ORDER

All other sections and provisions of Executive Order 43 shall remain in effect.

Done in Raleigh, North Carolina  
this 14th day of May, 1987.

EXECUTIVE ORDER NUMBER 49

GOVERNOR'S ADVISORY  
COMMISSION ON MILITARY AFFAIRS

By the authority vested in me  
as Governor by the Constitution and  
laws of North Carolina IT IS  
ORDERED:

Section 1. ESTABLISHMENT

I hereby establish the  
Governor's Advisory Commission  
on Military Affairs which shall be  
successor to the Governor's  
Advisory Commission on Military  
Affairs created under Executive  
Order Number 11 dated June 28,  
1985. The Commission shall be  
comprised of a least twenty-five (25)  
members appointed by the Governor  
to serve for a term of two (2) years.  
Membership shall consist of active  
and retired military personnel, State  
and local government officials, and  
local citizens who have an interest in  
or relationship to the military  
community. The Governor shall  
designate one of the members as  
Chairman who shall serve at the  
pleasure of the Governor.

Section 2. MEETINGS

The Commission shall meet  
regularly at the call of the chairman  
and may hold special meetings at  
any time at the call of the Chairman,  
the Governor, or the Secretary of  
Commerce.

Section 3. Duties

The Commission shall have the  
following duties:

- (a) Provide a forum for the  
discussion of issues concerning  
major military installations in the  
State, active and retired military  
personnel and their families.
- (b) Formulate goals and  
objectives which enhance  
cooperation and understanding  
between the military components,  
the communities, our  
congressional delegation, the

general public, and State, federal,  
and local governments.

(c) Strengthen the State's role  
in securing defence related  
business for North Carolina  
businesses and in selling North  
Carolina products to North  
Carolina military bases.

(d) Collect and study  
information related to supporting  
and strengthening the military  
presence within the State.

(e) Review proposed military  
affairs legislation.

(f) Advise the Governor on  
measures and activities which  
would support and enhance  
defense installations and military  
families within the State.

Section 4. ADMINISTRATION

Support staff for the  
Commission shall be provided by  
the Department of Commerce.  
Members shall serve without  
compensation but may receive  
reimbursement contingent on the  
availability of funds, for travel and  
subsistence expenses in accordance  
with State guidelines and procedures.

Section 5. RESCISSION OF  
PREVIOUS EXECUTIVE  
ORDER

Executive order Number 11,  
dated June 28, 1985, is hereby  
rescinded. All records of the  
Governor's Advisory Commission  
on Military Affairs created pursuant  
to said executive order, are  
transferred to the Commission  
created herein. The Commission  
herein shall be the successor to the  
Governor's Advisory Commission  
on Military Affairs.

Section 6. EFFECTIVE DATE  
AND EXPIRATION

This order shall be effective  
immediately and shall remain in  
effect until May 1, 1989, unless  
terminated earlier or extended by  
further Executive Order.

Done in the Capital City of  
Raleigh, North Carolina, this the  
20th day of May, 1987.

# **TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Facility Services intends to amend regulation cited as 10 NCAC 3R .1003.*

*The proposed effective date of this action is January 1, 1988.*

*The public hearing will be conducted at 2:00 p. m. on July 30, 1987 at Administration Bldg., 116 W. Jones St., Rm. 5034, Raleigh, NC 27611.*

*Comment Procedures: Address written comments to: Maola Jones, State Health Planning Section, 701 Barbour Drive, Raleigh, N. C. 27603. The record will remain open from June 15, 1987 until July 29, 1987.*

## **CHAPTER 3 - FACILITY SERVICES**

### **SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS**

#### **SECTION .1000 - SPECIAL CRITERIA AND STANDARDS: IN GENERAL**

##### **.1003 STATE MEDICAL FACILITIES PLAN**

(a) The ~~1987~~ 1988 North Carolina State Medical Facilities Plan contains the following information:

- (1) inventory of certain categories of inpatient and outpatient health care facilities, including number of beds and utilization of such;
- (2) type of services provided by each category of health care facility;
- (3) projections of need for acute care hospital (including rehabilitation services), long-term care facilities (including nursing homes and home health agencies), mental health facilities and end-stage renal dialysis services for various geographical areas of the state;
- (4) statement of policies related to acute care facilities, rehabilitation services, long-term care, psychiatric facilities, chemical dependency facilities,

and facilities for intermediate care for the mentally retarded, which are used with other criteria contained in this Subchapter and in G.S. 131E-183 and need projections to determine whether applications proposing additional beds and services of these types may be approved under the certificate of need program.

(b) This plan can be obtained from the Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina, at a cost of forty dollars (\$40.00) per copy. This plan is also available for inspection at the Division of Facility Services.

*Statutory Authority G.S. 131E-177(1).*

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Medical Assistance intends to amend regulation cited as 10 NCAC 50B .0313.*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 1:30 p.m. on July 15, 1987 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, NC 27603.*

*Comment Procedures: Written comments concerning this amendment must be submitted by July 15, 1987 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing.*

## **CHAPTER 50 - MEDICAL ASSISTANCE**

### **SUBCHAPTER 50B - ELIGIBILITY DETERMINATION**

#### **SECTION .0300 - CONDITIONS FOR ELIGIBILITY**

##### **.0313 INCOME**

(b) Income from the following sources is not counted in the calculation of Medicaid eligibility:

- (35) Title XX funds received to pay for services rendered by another individual or agency;
- (36) Any amount received as a

refund of taxes paid.

Statutory	Authority	G.S.
108A-25(b);	108A-61;	42 CFR
435.731; 42 CFR	435.732; 42 CFR	
435.733; 42 CFR	435.811; 42 CFR	
435.812; 42 CFR	435.831; 42 CFR	
435.832; 42 CFR	435.1007; 45 CFR	
233.20.		

**TITLE 15 - DEPARTMENT OF  
NATURAL RESOURCES AND  
COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10B .0115 (b) and (c).*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 7:30 p.m. on July 16, 1987 at Superior Courtroom on the second floor of the Washington County Courthouse in Plymouth, North Carolina.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will remain open for receipt of written comments from July 1, 1987, to 5:00 p. m. on July 31, 1987. Such written comments must be delivered or mailed to the N. C. Wildlife Resources Commission, Archdale Bldg., 512 N. Salisbury St., Raleigh, NC 27611.*

**CHAPTER 10 - WILDLIFE RESOURCES  
AND WATER SAFETY**

**SUBCHAPTER 10B - HUNTING AND  
TRAPPING**

**SECTION .0100 - GENERAL  
REGULATIONS**

**.0115 SHINING LIGHTS IN  
DEER AREAS**

(b) No person shall, between the hours of 11:00 p.m. and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (37) Washington--entire county;
- (37) (38) Wayne--entire county.

(c) No person shall, between the hours of one-half hour after sunset and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (37) Washington--entire county;
- (38) (37) Watauga--entire county;
- (39) (38) Wilkes--entire county;
- (40) (39) Yadkin--entire county;
- (41) (40) Yancey--entire county.

*Statutory Authority G.S. 113-134; 113-291.1.*

*Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to adopt regulation cited as 15 NCAC 10B .0121.*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 10:00 a.m. on July 21, 1987 at Room 386, Archdale Bldg., 512 N. Salisbury Street, Raleigh, NC.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments from July 1, 1987, to 5:00 p.m. on July 31, 1987. Such written comments must be delivered or mailed to the Wildlife Resources Commission, Archdale Bldg., 512 N. Salisbury Street., Raleigh, North Carolina, 27611.*

**.0121 WILD BIRD EXCLUSIONS**

The English sparrow (*Passer domesticus*), the domestic pigeon (*Columba livia*) and the starling (*Sturnus vulgaris*) are specifically excluded from the definition of "wild birds" contained in G. S. 113-129 (15a).

*Statutory Authority G.S. 113-134; 113-129 (15a).*

*Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to*

## PROPOSED RULES

*amend regulations cited as 15 NCAC 10C .0205; 10D .0002 and .0003.*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 1:00 p.m. on July 21, 1987 at Room 386, Archdale Bldg., 512 N. Salisbury Street, Raleigh, NC.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments from July 1, 1987, to 5:00 p.m. on July 31, 1987. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27611.*

### SUBCHAPTER 10C - INLAND FISHING REGULATIONS

#### SECTION .0200 - GENERAL REGULATIONS

##### .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. On game lands located in western North Carolina certain waters are classified and designated as public mountain trout waters. Those not further specifically classified as native trout waters are classified as general trout waters. (See 15 NCAC 10D .0004) Other streams, portions of streams and bodies of water which are not located on game lands are designated within this Rule as public mountain trout waters and are classified as general or native trout waters. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located.

(1) General Trout Waters. The general public mountain trout waters which are not located on game lands are designated in this Subparagraph under the counties where located. Indentation indicates the watercourse named is tributary to the next preceding watercourse named and not so indented. The designation applies to the entire water

course or impoundment named except as otherwise indicated in parentheses following the name. Other clarifying information may also be included parenthetically:

(X) Wilkes County:  
Yadkin River (not trout water)  
Roaring River (not trout water)  
East Prong (headwaters to Brewer's Mill on SR 1943)  
Middle Prong (headwaters to second bridge on SR 1736)  
Lovelace Creek  
(Thurmond Chatham Game Land boundary to mouth)  
Mulberry Creek (not trout water)  
Harris Creek (end of SR 1736 to mouth)  
Reddies River (not trout water)  
North Fork (Vannoy Creek) (headwaters to Union School bridge on SR 1559)  
North Prong (Darnell Creek) (downstream ford on SR 1569 to mouth)  
Middle Fork (Clear Prong) (headwaters to bridge on SR 1580)  
South Fork (headwaters to NC 16 bridge)  
Lewis Fork (South Prong) (headwaters to Lewis Fork Baptist Church)  
Fall Creek (except portion posted against trespass)  
Stony Fork Creek (headwaters to Mt. Zion bridge near intersection of SR 1155 and SR 1167)  
Wildcat Creek

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

### SUBCHAPTER 10D - GAME LANDS REGULATIONS

##### .0002 GENERAL REGULATIONS REGARDING USE

(f) Trapping. Subject to the restrictions contained in 15 NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

(1) on the field trail course of the Sandhills Game Land and the area adjoining the field trail

course on the north which is bounded on the east by SR 1003, on the north by Naked Creek and on the west by A-6 Lane;

- (2) on the Harmon Den and Sherwood Bear Sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner Game Land marked as the Penny Bend Rabbit Research Area;
- (6) on those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts.

*Statutory Authority G. S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.*

**.0003 HUNTING ON GAME LANDS**

- (d) Hunting Dates
- (5) Except as otherwise indicated, the following game lands or indicated portions thereof are closed to all hunting:
  - Caswell County--Caswell Game Land (that portion designated and posted as a "safety zone")
  - Dare County--Dare Game Lands (those parts of bombing range posted against hunting)
  - Gaston, Lincoln and Mecklenburg Counties --Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on October 4 and 11)
  - Roanoke River Wetlands (except by holders of special permits authorizing deer hunting on the Broadneck, Company Swamp and Conine Island tracts in Bertie

County and the Speller-Outlaw tract in Martin County; and except by holders of special permits authorizing waterfowl and small game hunting on the Conine Island tract on Wednesdays and Saturdays during January, such permits to be issued by authorized representatives of the Wildlife Resources Commission)

*Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.*

**TITLE 20 - DEPARTMENT OF STATE TREASURER**

*Notice is hereby given in accordance with G.S. 150B-12 that the State Treasurer intends to adopt, and amend regulations cited as 20 NCAC 1G .0504; .0505; .0506; .0507; and .0508.*

*The proposed effective date of this action is December 1, 1987.*

*The public hearing will be conducted at 10:00 a.m. on August 19, 1987 at Conference Room (Room 100), Department of State Treasurer, 325 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: A written copy of comments will be required of all persons wishing to speak at the public hearing.*

**CHAPTER 1 - DEPARTMENTAL RULES**

**SUBCHAPTER 1G - INVESTMENT PROGRAM**

**SECTION .0500 - REAL ESTATE INVESTMENT FUND**

**.0504 ALLOCATION OF INCOME TO PARTICIPANTS**

Each December 31 and June 30 At the end of each calendar quarter, all income and gains or losses earned less the investment fund's share of the expenses of investment management for the six month period then ending shall be distributed prorata based on the average number of ownership units owned by each participant.

## PROPOSED RULES

Distributions shall be made in ownership units to the credit of the participant at the close of business on the day of distribution.

*Statutory Authority G.S. 147-69.3(j).*

### .0505 VALUATION OF OWNERSHIP UNITS

(a) Each ~~month~~ calendar quarter the ownership units in the fund shall be valued at market price on the last working day of the ~~month~~ calendar quarter. The value of each ownership unit shall be determined by dividing the total net assets as defined in Paragraph (b) of this Rule by the total number of ownership units actually standing to the credit of all participants at the time of valuation. The valuation shall be determined before the purchase of new units and the sale of existing units to be effective that month.

*Statutory Authority G.S. 174-69.3(j).*

### .0506 PURCHASE OF OWNERSHIP UNITS

(a) Participants shall purchase ownership units in the investment fund on the last day of a calendar ~~month~~ quarter in which the State Treasurer determines that the size of the Real Estate Investment Fund shall be increased.

(c) Purchases shall be effective at the close of business on the last ~~calendar~~ day of the ~~month~~ calendar quarter. If the last day falls on a Saturday or Sunday, the transaction will be effective on that date. All transactions shall be affected by a transfer of cash from the Short-Term Investment Fund from balances previously deposited therein to the credit of the participant.

*Statutory Authority G.S. 147-69.3(j).*

### .0507 REDEMPTION OF OWNERSHIP UNITS

(a) Participants shall redeem ownership units in the investment fund on the last day of a calendar ~~month~~ quarter in which the State Treasurer determines that the size of the Real Estate Investment Fund shall be decreased.

(c) Redemptions shall be effective at the close of business on the last ~~calendar~~ day of the ~~month~~ calendar

quarter. If the last day falls on a Saturday or a Sunday, the transaction will be effective on that date. All transactions shall be affected by a transfer of cash to the Short-Term Investment Fund as balances to be deposited therein to the credit of the participant.

*Statutory Authority G.S. 147-69.3(j).*

### .0508 REBALANCING OF OWNERSHIP

When four calendar quarters have passed without a purchase or redemption of ownership units, the State Treasurer shall rebalance the ownership in the investment fund in any manner he deems appropriate which is not inconsistent with this Section.

*Statutory Authority G.S. 147-69.3.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice is hereby given in accordance with G.S. 150B-12 that the Board of Chiropractic Examiners intends to amend and repeal regulations cited as 21 NCAC 10 .0102 - .0103; .0201; .0203 - .0205; .0301; .0404; .0603; .0707.*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 10:00 a.m. on August 20, 1987 at Holiday Inn - Four Seasons, I-85 at High Point Rd. Exit, Greensboro, N.C.*

*Comment Procedures: Written comments may be mailed to the Secretary of the Board at any time prior to August 20, 1987. Persons desiring to make oral presentation should notify the Secretary in writing no later than August 15, 1987.*

### CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

#### SECTION .0100 - ORGANIZATION OF BOARD

##### .0102 GENERAL PURPOSE OF BOARD

(b) The board regulates the practice of chiropractic by:

(1) determining the qualifications

- of persons seeking to practice chiropractic and authorizing persons who have met the statutory requirements the privilege to so practice; and
- (2) enforcing the statutory provisions governing the practice of chiropractic and those duly enacted rules and regulations designed to ensure a high degree of competence and professionalism in the practice of chiropractic;
  - (3) certifying the education of assistants and or X-ray technologists who perform diagnostic imaging services in chiropractic facilities.

*Statutory Authority G.S. 90-142.*

.0103 STRUCTURE OF BOARD  
(a) Creation and Membership of Board of Examiners.

- (1) The State Board of Chiropractic Examiners is created to consist of seven members appointed by the Governor, Lieutenant Governor and Speaker of the House. Six of the members shall be practicing doctors of chiropractic, who are residents of this State and who have actively practiced chiropractic in the State of North Carolina for at least eight consecutive years immediately preceding their appointments: four of these six members shall be appointed by the Governor, and one each by the Lieutenant Governor and Speaker of the House. No more than three members of the board may be graduates of the same college or school of chiropractic. The other member shall be a person chosen by the Governor to serve a four year term or until his successor is appointed and qualified, to represent the public at large. The public member shall not be a health care provider nor the spouse of a health care provider. For purposes of board membership, "health care provider" means any licensed health care professional and any agent or

employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this Section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this Section, any person with significant financial interest in a health service or profession is not a public member.

- (2) All board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to the board on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his successor is chosen and qualifies. The Lieutenant Governor and Speaker of the House, respectively, shall fill the first and second vacancies in chiropractic members of the board arising by expiration of term after July 1, 1981, and shall continue to appoint their respective successors; the Governor shall fill all other such vacancies arising by expiration of term.
- (3) The Governor, Lt. Governor or Speaker of the House may remove any member appointed by him for good cause shown and may appoint persons to fill unexpired terms of members appointed by him.

(b) Selection of Chiropractic Members of Board. The Governor, Lieutenant Governor and Speaker of the House shall appoint chiropractic members of the board for terms of three years from a list provided by the board. For each vacancy, the board must submit at least three names to the Governor, Lieutenant Governor and Speaker of the House. The board shall establish procedures for the nomination and election of chiropractic members. These procedures shall be adopted under Article 2 of Chapter 150A of the

General Statutes, and notice of the proposed procedures shall be given to all licensed chiropractors residing in North Carolina. These procedures shall not conflict with the provisions of this Section. Every chiropractor with a current North Carolina license residing in this State shall be eligible to vote in all such elections, and the list of licensed chiropractors shall constitute the registration list for elections. Any decision of the board relative to the conduct of such elections may be challenged by civil action in the Wake County Superior Court. A challenge must be filed not later than 30 days after the board has rendered the decisions in the controversy, and all such cases shall be heard de novo.

(a) Creation and Membership of Board of Examiners. The creation and membership of the board are governed by G.S. 90-139, which statute is herewith adopted by reference.

(b) Selection of chiropractic members of the board. Selection of board members is governed by G.S. 90-140, which statute is herewith incorporated by reference.

Statutory Authority G.S. 90-142; 150B-9(d).

#### SECTION .0200 - PRACTICE OF CHIROPRACTIC

##### .0201 REQUIREMENT FOR LICENSING

(a) General. An individual must be licensed by the board to practice chiropractic in North Carolina. In order to be licensed an individual must comply with the detailed requirements of G.S. 90-143 which generally provide that an applicant shall be of good character, a graduate from a regular chiropractic school of good standing, and shall have successfully completed written and oral examinations on the principles and practice of chiropractic.

(b) Applicants Licensed in other States. If an applicant for licensure is already licensed in another state to practice chiropractic, the board shall issue a license to practice chiropractic to the applicant upon evidence that:

- (1) the applicant is currently an active, competent practitioner and is in good standing; and
- (2) the applicant has practiced at least one year out of the three years immediately preceding his or her application; and
- (3) the applicant currently holds a valid license in another state; and
- (4) no disciplinary proceeding or unresolved complaint is pending anywhere at the time and license is to be issued by this State; and
- (5) the licensure requirements in the other state are equivalent to or higher than those required by this State.

Any license issued upon the application of any chiropractor from any other state shall be subject to all of the provisions of this Article with reference to the license issued by the State Board of Chiropractic Examiners upon examination, and the rights and privileges to practice the profession of chiropractic under any license so issued shall be subject to the same duties, obligations, restrictions, and conditions as imposed by this Article on chiropractors originally examined by the State Board of Chiropractic Examiners.

(c) Good Character. The good character of an applicant is considered in determining whether an applicant is eligible to be licensed to practice chiropractic and further places the responsibility of furnishing to the board satisfactory proof of good character upon the applicant. Good character is defined by the board as being generally good conduct, reputation, and the use of good discretion in the conduct of everyday affairs in personal, business, and educational pursuits. An applicant may not possess good character if the individual has been found guilty of any offense described in Paragraph .0301(a) of this Rule.

(d) Education. The education of an applicant is considered in determining whether an applicant is eligible to be licensed to practice chiropractic. The specific educational requirements to be

eligible to be licensed in the practice of chiropractic are:

- (1) satisfy the board that he has completed two years of prechiropractic college education and received credits for a minimum of sixty semester hours;
- (2) exhibit a diploma or furnish proof of graduation from a chiropractic college accredited by the Council on Chiropractic Education or holding recognized candidate for accreditation status with the Council on Chiropractic Education or a college teaching chiropractic that, in the board's opinion, meets the equivalent standards established by the Council on Chiropractic Education, requiring an attendance of not less than four academic years, and supplying such facilities for clinical and scientific instruction, as shall meet the approval of the board.

(a) General. In order to be licensed to practice chiropractic in North Carolina, an applicant must satisfy the criteria established by G.S. 90-143, which statute is hereby adopted by reference.

(b) Applicants licensed in other states (reciprocity). The issuance of licenses to applicants already licensed in other states is governed by G.S. 90-143.1, which statute is herewith adopted by reference.

(c) Good Character. "Good character" as used in G.S. 90-143 is defined by the board as generally good conduct and reputation, and the use of appropriate discretion in personal, educational or business pursuits.

*Statutory Authority G.S. 90-142; 90-143; 150B-9(d).*

#### .0203 EXAMINATIONS

(j) Remedial Education. A candidate who fails any part of his examination three times will not be permitted to re-take the examination until he first satisfies the board that he has successfully completed at least one term of remedial education at an approved chiropractic college in the subject or subjects repeatedly

failed. For purposes of this Section, a failing grade is a grade below sixty-five percent.

(k) Review of Examination Results. An applicant who has been denied licensure because of failing examination grades may request a review of his answers provided his request is made in writing and received by the secretary of the board not later than 20 days after issuance of the examination results. The review shall be limited to a re-tabulation of the applicant's test scores to make certain no clerical errors were made in grading. Applicants shall not be permitted to discuss their examinations with board members, graders or test administrators.

*Statutory Authority G.S. 90-143.*

#### .0204 LICENSURE

(c) Change of Address. It shall be the responsibility of the licensee to inform the board of changes in his mailing address. Updated address information should be forwarded to the secretary in writing within 30 days after any such change.

*Statutory Authority G.S. 90-142.*

#### .0205 RENEWAL AND EXPIRATION OF LICENSE

(4) Expiration. A chiropractic licensee's license to practice chiropractic in North Carolina shall automatically be cancelled 30 days after the first Tuesday after the first Monday in January of each year unless renewed as provided in these Rules. Any licensee's license so cancelled may, in the sole discretion of the board, be restored upon the former licensee's showing evidence of good moral character, proper proficiency, and the payment of the renewal fee and an additional twenty-five dollars (\$25.00) reinstatement fee. Practitioners applying for reinstatement shall also be charged a fee for the evaluation of proficiency, which fee shall be in an amount equal to the fee charged reciprocity licensure applicants.

## PROPOSED RULES

*Statutory Authority G.S. 90-149; 90-155.*

### SECTION .0300 - RULES OF UNETHICAL CONDUCT

#### .0301 RULES OF UNETHICAL CONDUCT (REPEALED)

*Statutory Authority G.S. 90-142; 90-154.*

### SECTION .0400 - RULE-MAKING PROCEDURES

#### .0404 HEARING

##### (g) Statement of Reasons for Decision

(1) Any interested individual desiring a concise statement of the principal reasons for and against the adoption of a rule by the board and the factors that led to overruling the considerations urged against its adoption, may submit a request to the secretary of the board.

(2) For purposes of Subsection (a) of this Rule, an "interested person" shall be any person(s) whose rights, duties, or privileges might be affected by the adoption of the rule in question, or any group or organization of persons whose rights, duties or privileges might be affected by the rule.

(3) The request must be made in writing and submitted prior to adoption of the rule or within 30 days thereafter.

(g) Statement of Reasons for Decision. Any person whose rights, duties or privileges might be affected by a proposed rule may submit a request to the board for a concise statement of the reasons for and against adoption. After a rule has been adopted, any person affected thereby may request a statement summarizing the factors which led the board to reject considerations urged against its adoption. Such requests should be in writing, addressed to the secretary, and should be made either prior to adoption or within 30 days after adoption.

*Statutory Authority G.S. 150B-12.*

### SECTION .0600 - CONTESTED CASES

#### .0603 NOTICE OF CONTEMPLATED BOARD ACTION

(b) If the licensee or applicant does not mail a request for an administrative hearing within the time and in the manner required by this Section, the board may take the action contemplated in the notice. If the licensee or applicant does mail a request for an administrative hearing as required by this Rule, the board shall within 20 days of receipt of such request notify the licensee or applicant of the time and place of the hearing, which hearing shall be held not more than 30 nor less than 40 15 days from the date of the service of such notice.

*Statutory Authority G.S. 150B-38.*

### SECTION .0700 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND PROCEDURES

#### .0707 DECISION OF BOARD

(a) Manner and Time of Rendering Decision. After a hearing has been completed the board shall proceed to consider the case and as soon as practicable shall render their decision. The decision must be rendered within 90 days after the hearing.

(a) Manner of Rendering Decision. After a hearing has been completed the board shall proceed to consider the case and as soon as practicable shall render its decision.

*Statutory Authority G.S. 150B-38.*

*Notice is hereby given in accordance with G.S. 150B-12 that the Examiners for Nursing Home Administrators intends to amend regulation cited as 21 NCAC 37 .0519 (b) and (d).*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 10:00 a.m. on July 28, 1987 at Hearing Room, Room 201, 701 Barbour Drive, Raleigh, N. C. (Parking available in lower parking lot.)*

## PROPOSED RULES

*Comment Procedures:* Written comments may be sent to N.C. State Board of Examiners for NHA; 701 Barbour Drive, Room 102; Raleigh, N. C. 27603. Requests for an opportunity to present oral testimony and a summary of the testimony must be received at this address no later than July 21, 1987.

### CHAPTER 37 - NURSING HOME ADMINISTRATORS

#### SECTION .0500 - ADMINISTRATOR-IN-TRAINING

##### .0519 EXEMPTION FOR PREVIOUS EDUCATION AND EXPERIENCE

(b) An applicant with two years of college level education and no experience will be required to train for a period of 50 weeks. The maximum period may be reduced by taking board approved continuing education programs as detailed in Rule .0518. Each applicant will be required to serve as an administrator-in-training for a minimum of 12 weeks except as provided in Paragraph s (a) or (d) of this Rule.

(d) The minimum 12 weeks of service as an administrator-in-training may be reduced upon the submission of evidence satisfactory to the board that the applicant:

- (1) has served as the administrator of a hospital which has beds licensed to be used for nursing home levels of care for two years within the previous three years. Such administrator shall have been directly responsible for the day-to-day operations of the nursing home unit with the department heads of that unit reporting directly to the applicant; or,
- (2) has served as the director of nursing of a facility licensed as a nursing home for four years within the previous five years.

*Statutory Authority G.S. 90-278; 90-285.*

### TITLE 25 - DEPARTMENT OF STATE PERSONNEL

*Notice is hereby given in accordance with G.S. 150B-12 that the Office of*

*State Personnel intends to adopt, and amend regulations cited as 25 NCAC 1E .0704; .0705; .0706; .0707; .0708; .0709; .0710; and .0711; 1H .0605; .0616; and .0617; 1L .0001; .0002; .0004; and .0005.*

*The proposed effective date of this action is November 1, 1987.*

*The public hearing will be conducted at 9:00 a.m. on August 18, 1987 at 101 W. Peace Street, Raleigh, North Carolina 27611.*

*Comment Procedures:* Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to Drake Maynard, Office of State Personnel, 116 W. Jones Street, Raleigh, North Carolina 27611.

### CHAPTER 1 - OFFICE OF STATE PERSONNEL

#### SUBCHAPTER 1E - EMPLOYEE BENEFITS

##### SECTION .0700 - WORKER'S COMPENSATION LEAVE

##### .0704 COVERAGE

All North Carolina State Government employees are covered under the North Carolina Workers' Compensation Act. Those covered include all employees and officers of the state including elected officials, members of the General Assembly, and persons appointed to serve on a per diem, part-time or fee basis. Any employee who suffers an accidental injury or contracts an occupational disease within the meaning of the Workers' Compensation Act is entitled to benefits provided by the Act. The employee is entitled to medical benefits and compensation for time lost from work and any disability which results from the injury. The state has a "self-insured" program and expenditures are paid from current operating budgets.

*Statutory Authority G.S. 126-4.*

##### .0705 ADMINISTRATION

(a) Each state agency is responsible for accepting employer liability for the state and paying

claims. To assure the employee of the benefits provided by the Workers' Compensation Act and to effectively control the cost related to on-the-job injuries, each agency shall designate a Workers' Compensation Administrator to be responsible for the effectiveness of processing and monitoring the workers' compensation claims.

(1) The agency shall, on those cases that involve possible litigation issues, contact the Attorney General's Office who will defend all cases for the state before the Industrial Commission.

(2) The agency shall submit all reportable claims and valid medical and compensation payments to the Industrial Commission for approval. The Industrial Commission is responsible for insuring that each employer administers the provisions of the Workers' Compensation Act.

(b) The Office of State Personnel through its Employee Safety and Health Division is responsible for providing assistance to agency personnel in managing their workers' compensation programs and insuring that all agencies provide consistent application of coverage and compensation to injured employees.

(1) The Employee Safety and Health Division shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results. It shall maintain a statistical data base summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.

*Statutory Authority G.S. 126-4.*

**.0706 RESPONSIBILITY OF EMPLOYEE AND EMPLOYER**

(a) In accordance with G.S. 97-22 notice of an accident must be given to the employer by the employee or his/her representative as soon as possible. No compensation shall be payable unless such written notice is

given 30 days after occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the commission is satisfied that the employer has not been prejudiced thereby.

(b) The agency is required by law to report the injury to the North Carolina Industrial Commission using the I.C. Form 19 within five days from knowledge thereof any claim that results in more than one day absent from work or if medical expenses exceed five hundred dollars (\$500).

(c) Responsibility for claiming compensation is on the injured employee. A claim must be filed by the employee through the agency/university with the North Carolina Industrial Commission within two years from the date of injury or knowledge thereof. Otherwise, the claim is barred by law.

*Statutory Authority G.S. 97-22; 126-4.*

**.0707 USE OF LEAVE**

(a) The Workers' Compensation law provides medical benefits and a weekly compensation benefit equal to 66 2/3 percent of the employee's average weekly earnings up to a maximum established by the Industrial Commission each year. When an employee is injured, he/she must go on workers' compensation leave and receive the workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:

(1) Option 1: Elect to take sick or vacation leave during the required waiting period and then go on workers' compensation leave and begin drawing workers' compensation weekly benefits.

(2) Option 2: Elect to go on workers' compensation leave with no pay for the required waiting period and then begin drawing workers' compensation weekly benefits.

If the injury results in disability of

more than a specified number of days, as indicated in G.S. 97-28, the workers' compensation weekly benefit shall be allowed from the date of disability. If this occurs in the case of an employee who elected to use leave during the waiting period, no adjustment shall be made in the leave used for these workdays.

(b) In either case, after the employee has gone on workers' compensation leave, the weekly benefit may be supplemented by the use of partial earned sick or vacation leave in accordance with a schedule published by the Office of State Personnel each year. Since the employee must receive the weekly benefit, this will provide an income approximately equal to the past practice of using 100 percent of sick or vacation leave.

(c) Compensatory time may be substituted for sick or vacation leave if applied within the time frames provided under the Hours of Work and Overtime Compensation Policy.

(d) If the employee has earned leave or compensatory time and chooses to use it while drawing the weekly benefit, it would be paid on a temporary payroll at the employee's hourly rate of pay. It is subject to State and Federal withholding taxes and Social Security, but not subject to retirement, just the same as other temporary pay.

(e) Unused leave may be retained for future use. (Note: If an employee has over 240 hours of vacation leave at the time an injury occurs, depending on the nature and time of the injury and the anticipated time out of work, he/she should be advised to exhaust leave in excess of the 240 hours - particularly if the injury occurs late in the year when it would possibly cause a loss of vacation at the end of the year.)

*Statutory Authority G.S. 126-4.*

#### .0708 CONTINUATION OF BENEFITS

While on workers' compensation leave an employee is eligible for continuation of the following benefits:

(1) Performance Increase: Upon reinstatement, an employee's salary will be computed based on

the last salary plus any legislative increase to which entitled. Any performance increase which would have been given had the employee been at work may also be included in the reinstatement salary, or it may be given on any payment date following reinstatement.

(2) Vacation and Sick Leave:

While on workers' compensation leave, the employee will continue to accumulate vacation and sick leave to be credited to his/her account for use upon return. If the employee does not return, vacation and sick leave accumulated during the first 12 months of leave will be paid in a lump sum along with other unused vacation.

(3) Since the employee is on workers' compensation leave and is not able to schedule vacation time off, the accumulation may in some cases exceed the 240 hours and shall be handled as follows:

(a) The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during workers' compensation leave. The excess may be used after returning to work or carried on the leave account until the end of the calendar year following a full year after the employee's return to work.

(b) If the employee separates during the period that excess vacation is allowed, the excess leave to be paid in a lump sum may not exceed the amount accumulated during the first 12 months of workers' compensation leave.

(4) Hospitalization Insurance:

While on workers' compensation leave, an employee is in pay status and will continue coverage under the state's health insurance program. Monthly premiums for the employee will be paid by the state. Premiums for any dependent coverage must be paid directly by the employee.

(5) Retirement Service Credit:

While on workers' compensation leave an employee does not receive retirement credit. As a member of the Retirement System, the employee may purchase credits for the period of time on an approved leave of absence. Upon request by the employee, the Retirement System will provide a statement of the cost and a date by which purchase must be made. If purchase is not made by that date, the cost will have to be recomputed.

*Statutory Authority G.S. 126-4.*

**.0709 RETURN TO WORK**

When an employee, who has been injured on the job and placed on workers' compensation leave, has been released to return to work by the treating physician, there are three possible return to work situations.

- (1) When an employee who is on workers' compensation leave, has reached maximum medical improvement and has been released to return to work by the treating physician, the agency shall return the employee to the original position he/she held prior to workers' compensation leave.
- (2) When an employee, who has not reached maximum medical improvement, is ready to return to limited work duty with approval of the treating physician, but retains some disability which prevents successful performance in the original position, the agency shall provide work reassignment suitable to the employee's capacity which is both meaningful and productive, and advantageous to the employee and the agency. This work reassignment shall be a temporary assignment and shall not exceed 90 days without approval from the agency personnel officer. When the employee reaches maximum medical improvement the agency shall return the employee to the original position held prior to workers' compensation leave.

- (3) When an employee that has received a disability which prohibits employment in his/her previous position and has reached maximum medical improvement and been released to return to work by the treating physician the agency shall attempt to place the employee in another position suitable to the employee's capacity which is both meaningful and productive, and advantageous to the employee and the agency. This work placement may be a permanent assignment or either a part-time or temporary assignment until a permanent assignment is found.

- (a) If a position is not available for work placement, the agency shall appoint the employee to the first suitable vacancy which occurs. During the interim period a suitable vacancy is not available, the employee shall be referred to the Office of State Personnel for reemployment assistance and a possible return to work in another agency.
- (b) Work placement efforts will continue for a period not to exceed 12 months, except with the approval of the agency personnel officer. Any time an employee has reached maximum medical improvement and is taken off workers' compensation leave but a position is not available the employee shall be placed in leave without pay status. While in leave without pay status the employee may make arrangements to continue coverage under the state's health insurance plan. The employee is responsible for paying the total premium cost.
- (c) In some cases the extent of disability may be such that vocational rehabilitation will be necessary. If so, the agency will be responsible for making the necessary arrangements for such training which may be necessary to assist the employee to obtain suitable employment consistent with their performance capabilities.

*Statutory Authority G.S. 126-4.*

**.0710 REFUSAL OF SUITABLE  
EMPLOYMENT**

The Workers' Compensation Act prevents employers from firing or demoting employees in retaliation for pursuing remedies under the Act, but does not speak to reemployment after an employee has been released by the treating physician to return to work. If an employee who has been on workers' compensation leave has reached maximum medical improvement, and been released to return to work by the treating physician refuses suitable employment in keeping with his/her capacity, the employer has the right to implement dismissal procedures.

*Statutory Authority G.S. 126-4.*

**.0711 FAILURE TO COOPERATE**

When it has been determined that the employee has not fully cooperated with the intent and spirit of the Worker's Compensation Policy, management may terminate the employee. Workers' compensation benefits may be continued or discontinued in accordance with the provisions of the Workers' Compensation Act.

*Statutory Authority G.S. 126-4.*

**SUBCHAPTER III - RECRUITMENT  
AND SELECTION**

**SECTION .0600 - GENERAL  
PROVISIONS**

**.0605 SPECIAL APPLICANT  
CONSIDERATIONS: AGENCY  
RESPONSIBILITIES**

**(c) Employment of Aliens.**

~~Applicants from other countries, who do not have United States citizenship, must have proper authorization from the U.S. Immigration and Naturalization Service (INS) to be considered for employment.~~

*Statutory Authority G.S. 126-4; 128-15.*

**.0616 AGENCY RESPONSIBILITY**

(a) All state agencies and universities shall, within three working days from entry on duty,

verify the employment eligibility of all new employees hired on or after November 7, 1986. Verification must establish both identity and employment authorization, and shall include the completion of federal Form I-9. INS has approved a number of documents which the employee can provide to meet this purpose, and it is not permissible for agencies to specify a certain document type. Form I-9 must be retained for three years after the employee's hiring date, or one year after the employee's separation, whichever is later.

(b) If an employee's work authorization expires, the agency shall update the Form I-9 to show that the employee has a renewed authorization to continue employment; if an authorization renewal cannot be obtained, employment must be discontinued. If a prior employee is reemployed within three years of the initial completion of Form I-9, and the information on the initial form remains accurate, it is not necessary for the employing agency to complete a new Form I-9. In instances of promotion, demotion, and/or reemployment involving inter-agency transfer, the original, employing agency must provide to the employee or the receiving agency, upon request, a copy of the most recent Form I-9.

*Statutory Authority G.S. 126-4(4); 8 CFR Parts 109 and 274a, 1987.*

**.0617 EMPLOYEE'S RESPONSIBILITY**

All employees hired on or after November 7, 1986, must present documents to the employing agency or university within their first three work days which verify their identity and employment authorization. If an employee is unable to present the actual documents within this time limit, he/she must present a receipt from INS within the three day period validating his/her application for the required documents, and must provide the actual documents within 21 days of initial employment. An employee whose original work authorization has expired must present proof of an

## PROPOSED RULES

authorization renewal in order to remain employed.

*Statutory Authority G.S. 126-4(4); 8 CFR Parts 109 and 274a, 1987.*

### SUBCHAPTER 1L - AFFIRMATIVE ACTION

#### .0001 DUTIES OF SECTION

The affirmative action section of the Office of State Personnel is responsible for developing and administering a program to ensure greater utilization of all persons by identifying previously underutilized groups in the workforce, such as minorities, women, and ~~the handicapped~~ handicapped persons; and making special efforts toward their recruitment, selection, development and upward mobility.

*Statutory Authority G.S. 126-4; 126-16.*

#### .0002 POLICY

(a) It is the official policy of the State of North Carolina to provide all current employees and applicants for state employment with equal employment opportunities, without discrimination on the basis of race, color, religion, national origin, sex, age, or ~~physical handicap~~ handicapping condition.

(b) The commitment to equal career opportunity shall be undertaken through a continuing program of affirmative action in order to:

- (1) assure that all personnel policies and practices relevant to total employment in state government will guarantee and preserve equal employment opportunities for all persons of the state;
- (2) assure more equitable representation of women, minorities, and ~~the handicapped~~ handicapped persons throughout all aspects of the state's workforce.

*Statutory Authority G.S. 126-4(10); 126-16.*

#### .0004 PROGRAM IMPLEMENTATION - DEPARTMENT LEVEL

- (a) Each department head of state

government shall develop and implement a departmental affirmative action program designed to solve problems in those areas that adversely affect women, minorities and ~~handicapped~~ handicapped persons.

(b) Each department shall present ~~such~~ a plan for this affirmative action program to the Office of State Personnel for review, technical assistance and approval by the Director of State Personnel.

(c) Each department's affirmative action plan shall ~~meet all requirements of the administrative EEO/AA Planning and Resources Guide and shall include~~ but not be limited to the following elements:

- (3) a recruitment program designed to attract minorities, women and ~~handicapped persons~~ handicapped persons to all levels of employment;
- (6) a program of training to enhance employee development and advancement opportunities. Such program shall include a process to ensure that minorities, women and ~~the handicapped~~ handicapped persons have adequate representation and participation in internal and external training programs such as Supervisory Training, Public Managers Program, Education Assistance Program and Government Executives Institute;
- (8) reduction-in-force ~~mechanism~~ procedures which maintain the proportion of protected group members in the departmental workforce and preserves gains made in utilizing protected group members;

*Statutory Authority G.S. 126-4(10); 126-16.*

#### .0005 PROGRAM PLAN REVIEW

(a) Each state department/agency employing SPA employees shall submit annually an Affirmative Action Plan (update of entire plan or revisions as specified) or shall submit an application for a three-year EEO/AA planning cycle and a Three-year Affirmative Action plan to the Office of State Personnel

## PROPOSED RULES

for review, technical assistance, and approval by the State Personnel Director. to the Office of State Personnel. The submission date will be October 1 of each year for annual plans or October 1 of the year in which the previously approved three-year plan is to end.

(b) Each department shall submit to the Office of State Personnel an "assessment of progress" on forms supplied by the Office of State Personnel. The report shall be submitted periodically on an as-needed basis; such need will be determined by the Office of State Personnel. "The assessment of progress" shall be used by the

departments for self-monitoring and used by the Office of State Personnel as a basis for technical assistance to the departments. Each state department/agency applying for three-year Affirmative Action Plan approval shall, in the judgement of the State Personnel Director, meet each of the preliminary requirements for three-year EEO/AA plan approval stated in the Standards For Three-Year Plan Approval issued by the Equal Opportunity Services Division of the Office of State Personnel.

*Statutory Authority G.S. 126-4(10); 126-16.*

*When the text of any adopted rule differs from the text of that rule as proposed, upon request from the adopting agency, the text of the adopted rule will be published in this section.*

*When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.*

## TITLE 5 - DEPARTMENT OF CORRECTIONS

### CHAPTER 2 - DIVISIONS OF PRISONS

#### SUBCHAPTER 2A - ORGANIZATION AND PERSONAL CONDUCT

##### SECTION .0200 - CONDUCT OF EMPLOYEES

##### .0202 CONDITIONS OF EMPLOYMENT

(e) Use of Inmate Labor, State Owned supplies and Equipment:

- (1) No work will be done in any shop or by any inmate for the private purposes of any employee or any other person except as specifically authorized by law or regulation. No employee shall derive any direct or indirect benefit from the use of inmate labor. Further, no other person may derive either direct or indirect benefit from the use of inmate labor which is not specifically authorized by law or regulation.
- (2) No employee will consume or use equipment, facilities, or supplies, including scrap material, except as he may be legally entitled to do. All equipment, facilities, and supplies provided by the department will be used according to design and instructions for the safety of inmates, personnel, and other

persons. Provided, the transfer and disposition of all surplus state property, including scrap material, shall be conducted in accordance with procedures established by the Department of Administration, Auxiliary Services Section, codified at 1 NCAC 4G .0100 through 4G .0500. No state-owned property will be transferred or sold without written authorization of the Auxiliary Services Director. Food, cleaners, and other supplies will be used according to recipes and instructions.

*History Note: Statutory*

*Authority G.S. 143-3;*

*148-11; 148-23;*

*Eff. February 1, 1976;*

*Amended Eff. July 1, 1987;*

*May 1, 1987; August 1, 1983.*

#### SUBCHAPTER 2D - PUBLIC COMMUNICATIONS

##### SECTION .0600 - ACCESS TO INFORMATION/INMATE RECORDS

##### .601 INMATE RECORDS

(a) Matters of public record will be made available for examination upon request. Copies may be provided at the expense of the requestor. An inmate's or former inmate's name, age, race, sex, offense for which convicted, court where sentenced, length of sentence, date of sentencing, date of arrival at or transfer from a prison, program placements and progress, custody classification, disciplinary offenses and dispositions, escapes and recaptures, dates regarding release, and the presence or absence of detainers will be considered matters of public record. Except as provided in this Section, no other material may be released to anyone. Unauthorized release of confidential information by departmental employees will be cause for immediate dismissal or other appropriate disciplinary action.

(b) Medical records, except for psychiatric and psychological evaluations of an inmate or former inmate may be released to a physician, the legal representative of the inmate, or the personal

representative of a deceased former inmate with the written consent of the person to whom such records pertain or the personal representative of such person if the inmate is deceased. Upon written consent, the content of an inmate's mental health records may be released to the attending psychologist, psychiatrist, or governmental agencies directly involved in mental health, rehabilitation, or disability services or evaluations. Even with written consent, specific clinical information shall not be released to non-mental health professionals, including attorneys, family members, employers, and members of the news media. Copies will be provided at the expense of the requestor.

(c) Material contained in inmate files may be released to official federal and state law enforcement agencies when their representatives present proper credentials. Such agencies must agree to maintain the confidential nature of the material or information. Materials will be provided to the courts upon request.

*History Note: Statutory  
Authority G.S. 148-11;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1987.*

#### SUBCHAPTER 2F - CUSTODY AND SECURITY

##### SECTION .0600 - CUSTODIAL CLASSIFICATIONS

##### .0605 COMMUNITY RESOURCE COUNCILS

(a) General. Community Resource Councils are developed to provide orderly assistance in stimulating community involvement and to promote volunteerism in prison facilities throughout the state. Council activities shall be governed by Department of Correction policies and procedures.

(b) Location. Each Division of Prisons facility will organize and maintain a community Resource Council. Councils will be established based on the nature and function of each facility. Upon written justification, a facility may request a temporary exemption from the Director of Prisons.

(c) Appointment:

(1) The superintendent of each each prison facility and the respective area administrator, if appropriate, will recommend persons to serve as council members. Each superintendent and area administrator will confer with local community leaders during the selection process. The list of nominees will be submitted to the Department of Correction through the chain of command. The Secretary of Correction will present final recommendations to the Governor. The Governor may also consider other recommendations.

(2) The Governor shall appoint council members to two-year terms. Council appointments will be made annually, with appointments effective January 1 of each year. When unscheduled vacancies occur, new appointees will serve the unexpired term of the council member being replaced, and may be eligible for reappointment to a full term.

(3) During the initial organization of each council, members will be appointed to serve staggered terms. Each year members will be reappointed; however, no council shall make By-laws or other policies which call for the election of more than one half its members during any one year.

(4) The Governor may remove any member of the council for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G. S. 143B-16 of the Executive Organization Act of 1973.

(d) Statement of Purpose:

(1) Councils shall be governed in general principle by an established statement of purpose approved by the Secretary of Correction. Copies of this purpose statement will be maintained in the Office of the Secretary.

(2) Unit superintendents and council chairpersons shall clarify the specific mission and purpose

of each Community Resource Council. Other goals and short-term planning strategies should be developed to provide positive leadership and recognition of members for the achievement of correctional goals established by the local facility, the administration, and the Community Resource Council.

(c) By-Laws. Each council shall adopt standard by-laws. Issues not addressed by the standard by-laws are reserved to the discretion of individual councils but must comply with state law and with departmental policies and procedures.

(f) Community Resource Council Activities:

(1) Volunteers. The council should be involved in recruitment of volunteers to assist in providing volunteer services or fund-raising activities at the facility.

(2) Fund-Raising. Special, local council fund-raising guidelines must be designed to assure that gifts and donations are appropriately receipted. If a major (anything greater than one thousand dollars (\$1,000) fund-raising project is contemplated, such as for the construction of a chapel, a separate fund-raising body must be established and incorporated as a nonprofit organization. All proposed major fund-raising projects must be approved by the secretary prior to commencement of the project.

(3) Program Activity.

Acceptable program activities for council volunteers may include assisting inmate families in understanding prison policies and procedures, providing workshops for staff on relevant issues, or generating in-kind contributions of equipment and supplies. Provided, any in-kind contribution in an amount

greater than one thousand dollars (\$1,000) shall be subject to the approval of the secretary.

(g) Training:

(1) A training program approved by the Office of Volunteer Services will be conducted by each unit superintendent or a designee for each council member.

(2) Training should be offered to councils on a continuing basis to assure efficiency of operations and the achievement of Department of Correction goals.

(h) Reporting. The chairperson of each council shall submit a copy of the minutes of each council meeting to the Volunteer Services Program Consultant and to the secretary on a regular basis. These reports should reflect council activities, achievements and any problems. A periodic summary report shall be compiled from all minutes submitted to the Office of the Volunteer Services Program Consultant and distributed to council chairpersons, area administrators, institution heads and unit superintendents.

(i) Evaluation. Each council shall complete an annual evaluation to determine its progress and effectiveness in meeting community needs, staff needs, inmate needs, and in the accomplishment of other specific objectives set forth by policy or those goals established by the councils members.

(j) Recognition Program. Recognition activities should be held annually to recognize community volunteers and other persons instrumental in the attainment of goals and objectives and other special achievements which merit recognition.

*History Note: Statutory Authority  
G.S. 148-4; 148-11;  
Eff. July 1, 1987.*

# LIST OF RULES AFFECTED

## NORTH CAROLINA ADMINISTRATIVE CODE

### LIST OF RULES AFFECTED

EDITION XII, NO. 3

EFFECTIVE: June 1, 1987

AGENCY			ACTION TAKEN
ADMINISTRATION			
1	NCAC	5B .0809	Repealed
		.1801-.1802	Repealed
		.1902	Repealed
		.1904-.1905	Repealed
		.1908	Repealed
		6B .0206-.0208	Amended
		.0306	Amended
		.0512	Amended
		.0605	Amended
		.0607	Amended
AGRICULTURE			
2	NCAC	42 .0102	Amended
		.0201	Amended
		.0401	Amended
COMMERCE			
4	NCAC	1G .0101-.0103	Temp. Adopted
			Expires 8-24-87
		.0201-.0203	Temp. Adopted
			Expires 8-24-87
		.0301-.0302	Temp. Adopted
			Expires 8-24-87
		2S .1020	Adopted
GOVERNOR'S OFFICE			
9	NCAC	2	Executive Order Number 43
			Eff. April 7, 1987
			Executive Order Number 44
			Eff. April 22, 1987
			Executive Order Number 45
			Eff. April 22, 1987
			Executive Order Number 46
			Eff. April 22, 1987
HUMAN RESOURCES			
10	NCAC	1B .0201	Amended
		.0206	Amended
		.0208-.0213	Amended
		.0215-.0216	Amended
		.0219-.0220	Amended
		.0222	Amended
		.0223-.0224	Adopted
		1F .0401-.0406	Adopted
		14C .1014	Amended
		.1107	Amended
		.1125	Amended
		.1138	Amended
		.1142	Amended

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		.1146	Adopted
		42C .2302	Amended
		.3003	Amended
		42W.0003	Amended
		.0005	Adopted
<b>LABOR</b>			
13	NCAC	7C .0101	Amended
<b>NATURAL RESOURCES AND COMMUNITY DEVELOPMENT</b>			
15	NCAC	10F .0310	Amended
		.0314	Amended
		.0352	Adopted
<b>VETERINARY MEDICAL BOARD</b>			
21	NCAC	66 .0309	Adopted
<b>HOUSING FINANCE AGENCY</b>			
24	NCAC	1D .0103	Repealed
		.0501-.0503	Amended
		1H .0103	Amended
		1J .0101	Amended
		.0103-.0105	Amended
		.0106	Repealed
		.0107	Adopted
		.0201-.0202	Amended
		.0203	Repealed

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ADMINISTRATIVE CODE**

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3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department
8	Elections, State Board of
9	Governor
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control, Department of
15	Natural Resources and Community Development
16	Education, Department of
17	Revenue, Department of
18	Secretary of State
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners
20	Foresters, Board of Registration for
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22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
30	Law Examiners, Board of
31	Marital & Family Therapy Certification Board
32	Medical Examiners, Board of
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36	Nursing, Board of
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54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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EO - Executive Order  
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FR - Final Rule  
GS - General Statute  
JO - Judicial Order  
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